

152 FERC ¶ 61,112  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

August 6, 2015

In Reply Refer To:  
Entergy Services, Inc.  
Docket No. ER13-1195-000

Entergy Corporation  
101 Constitution Ave., NW  
Suite 200 East  
Washington, DC 20002

Attention: Megan E. Vetula, Esq.  
Attorney for Entergy Services, Inc.

Dear Ms. Vetula:

1. On January 26, 2015, as amended,<sup>1</sup> in the above-captioned proceeding, you submitted, on behalf of Entergy Services, Inc. (Entergy), a Settlement Agreement (Settlement) between Entergy Arkansas, Inc. (Entergy Arkansas) and the Cities of North Little Rock, Benton, and Osceola, Arkansas (collectively, Arkansas Cities) (Settling Parties).<sup>2</sup> On February 18, 2015, Commission Trial Staff filed comments in support of the Settlement. No other comments were filed. On March 10, 2015, the Settlement Judge certified the Settlement to the Commission as an uncontested settlement.<sup>3</sup>

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<sup>1</sup> On January 27, 2015 and February 3, 2015, respectively, you filed errata to the Settlement to include documents inadvertently omitted from the filing and correct a typographical error.

<sup>2</sup> Although the City of Benton, Arkansas was not included in Entergy Arkansas' 2013 Wholesale Formula Rate Update (2013 Rate Update), it is a party to the Settlement. *See* Settlement at n.1. The Cities of West Memphis and Prescott did not raise issues with respect to the 2013 Rate Update, so they are not parties to this Settlement. *Id.*

<sup>3</sup> *Entergy Servs., Inc.*, 150 FERC ¶ 63,010 (2015).

2. The Settlement addresses the 2013 Rate Update, which updates the distribution rates or monthly substation charges for Arkansas Cities under their respective Network Integration Transmission Service Agreements.

3. Pursuant to the Settlement,

[t]he standard of review for any modifications to this [Settlement] that are not agreed to by all the Parties, including any modifications resulting from the Commission acting *sua sponte*, will be the just and reasonable standard of review. Notwithstanding the foregoing, any modification proposed by a non-settling party shall not be made unless such entity proposing the modification demonstrates that the modification is required by the public interest in accordance with *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *Fed. Power Comm'n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (the *Mobile-Sierra* doctrine), as clarified in *Morgan Stanley Capital Grp., Inc. v. Pub. Util. Dist. No. 1 of Snohomish County, Washington*, 128 S.Ct. 2733, 171 L. Ed. 2d 607 (2008) and refined in *NRG Power Mktg. v. Me. Pub. Utils. Comm'n*, 130 S. Ct. 693, 700 (2010).<sup>4</sup>

4. Because the Settlement appears to invoke the *Mobile-Sierra* “public interest” presumption with respect to third parties, we will analyze the applicability here of that more rigorous application of the just and reasonable standard.

5. The *Mobile-Sierra* “public interest” presumption applies to an agreement only if the agreement has certain characteristics that justify the presumption. In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the agreement at issue embodies either: (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm’s length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm’s-length negotiations. Unlike the latter, the former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption. In *New England Power Generators Association v. FERC*,<sup>5</sup> however, the D.C. Circuit determined that the Commission is legally authorized to impose a more rigorous application of the statutory “just and reasonable” standard of review on future changes to agreements that fall within the second category described above.

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<sup>4</sup> Settlement, § II(11).

<sup>5</sup> *New England Power Generators Ass’n v. FERC*, 707 F.3d 364, 370-71 (D.C. Cir. 2013).

6. The Commission finds that the Settlement involves contract rates to which, pursuant to the Settlement, the *Mobile-Sierra* presumption applies with respect to modifications proposed by third parties. The Settlement updates the distribution rates or monthly substation charges for Arkansas Cities under their respective Network Integration Transmission Service Agreements.<sup>6</sup> The Settlement applies only to the Settling Parties. These circumstances distinguish the Settlement in this case from the settlements in other cases, such as *High Island Offshore System, LLC*,<sup>7</sup> which the Commission held did not establish contract rates to which the *Mobile-Sierra* presumption applied. The settlements in those cases involved the pipelines' generally applicable rate schedules for its open access transportation services.

7. The Settlement resolves all issues in dispute in this proceeding. The Settlement appears to be fair, reasonable, and in the public interest, and it is hereby approved. The Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

8. Entergy is required to make a compliance filing in eTariff format as required by Order No. 714<sup>8</sup> to reflect the Commission's action in this order within 30 days of the issuance of this order.

9. This letter order terminates Docket No. ER13-1195-000.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>6</sup> See *Entergy Arkansas, Inc.*, 145 FERC ¶ 61,245 (2013) (accepting Wholesale Distribution Service Tariff and Agreements).

<sup>7</sup> 135 FERC ¶ 61,105 (2011); see also *Panhandle Eastern Pipe Line Co.*, 143 FERC ¶ 61,041 (2013); *Southern LNG Co.*, 135 FERC ¶ 61,153 (2011); *Carolina Gas Transmission Corp.*, 136 FERC ¶ 61,014 (2011).

<sup>8</sup> See *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).